



Steven W. Troxler  
Commissioner

North Carolina Department of Agriculture  
and Consumer Services  
*Veterinary Division*

R. Douglas Meckes, DVM  
State Veterinarian

August 29, 2016

All Wags Doggie Daycare and Boarding  
Attn: Mary Lisa Carmichael  
670 Griffith Road  
Charlotte, North Carolina 28217

**NOTICE OF CIVIL PENALTY**

**RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02, N.C.  
ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0102(1), .0102(3), and .0202(a)**

**AWS-CP-2016-8**

**Facility: All Wags Doggie Daycare and Boarding**

Dear Ms. Carmichael:

Pursuant to N.C. Gen. Stat. § 19A-40, I am issuing this notice to you that All Wags Doggie Daycare and Boarding is assessed a civil penalty of \$4,000.00 as provided in the enclosed Notice of Violations and Order.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may present your offer to me. I can be contacted by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

### **PAYMENT**

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services  
Dr. Patricia Norris  
Director, Animal Welfare Section  
1030 Mail Service Center  
Raleigh, NC 27699-1030

### **APPEAL**

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse  
North Carolina Department of Agriculture and Consumer Services  
Registered Agent and General Counsel  
1001 Mail Service Center  
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to be 'PN', with a horizontal line extending to the right.

Patricia Norris, DVM  
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, NCDA&CS  
Ms. Tina Hlabse, General Counsel, NCDA&CS  
Mr. Joe Reardon, Assistant Commissioner, NCDA&CS  
Christopher McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER SERVICES,  
VETERINARY DIVISION

IN THE MATTER OF  
ALL WAGS DOGGIE DAYCARE  
AND BOARDING

) NOTICE OF VIOLATIONS,  
) ASSESSMENT OF CIVIL  
) PENALTY  
)  
) For Violations Of:  
) 02 N.C.A.C. 52J .0102(1)  
) 02 N.C.A.C. 52J .0102(3)  
) 02 N.C.A.C. 52J .0202(a)

Acting pursuant to N.C. Gen. Stat. §19A-40, Dr. Patricia Norris, Director of the Animal Welfare Section ("AWS"), Veterinary Division, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

**FINDINGS OF FACT**

1. At all times pertinent to this matter All Wags Doggie Daycare and Boarding (the "kennel") is a boarding kennel licensed pursuant to N.C. General Statute §19A-28.
2. On October 12, 2015, AWS issued a Civil Penalty to the kennel for violation of 02 N.C.A.C. 52J .0102(3), .0204(e) and .0209(2).
3. On June 2, 2016, AWS issued a Civil Penalty to the kennel for violation of 02 N.C.A.C. 52J .0102(1), .0204(e) and .0209(2).
4. On July 8, 2016, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") inspected the kennel and issued a "Disapproved" inspection report due to violation of 02 N.C.A.C. 52J .0202(a). The ambient temperature in the kennel was 90.8°F.
5. On July 11, 2016, AWS issued a Notice of Warning and Notice of Deficiency to the kennel for violation of 02 N.C.A.C. 52J .0202(a). This Notice directed the kennel to immediately comply with the requirements of 02 N.C.A.C. 52J .0202(a) and to provide a written plan within 7 days of receipt of the Notice. This written plan was to detail a definitive timeline for a permanent solution for the facility to comply with these requirements.
6. On July 22, 2016, Inspector Blatche inspected the kennel and issued a "Disapproved" inspection report. At the time of this inspection, Inspector Blatche noted the facility to be in violation of 02 N.C.A.C. 52J .0102(3) and .0202(a). A dog named Ina was noted to be on medication but no medication log documenting the administration of the medication was present. The ambient temperature within the kennel was 92.4°F.
7. Upon arrival at the kennel on August 26, 2016, Inspector Blatche noted that the rental air conditioning (A/C) unit was not running. Kennel staff relayed to Inspector Blatche that the A/C had not been in operation since August 21, 2016. The ambient temperature was measured at 92°F by the thermometer mounted on the wall of the facility and 93°F by the handheld thermometer used by Inspector Blatche. The lights of the facility were turned off. There were 15 dogs present in this area and all were confined to kennels.

8. During the August 26, 2016 visit, Inspector Blatche noted a dog named Toby to be housed in the quarantine area. The kennel staff relayed that Toby had been boarding at the kennel since August 20, 2016 and that he was separated because he was to be receiving medication. No medication log was present for this dog. The kennel staff relayed that they thought the dog had been receiving the medication but there was no documentation of administration of any medication. In addition, there was no owner information for Toby.
9. On August 26, 2016, Inspector Blatche spoke with the kennel owner who relayed that she does not intend to implement a corrective action to permanently address the ambient temperature requirement and does not intend to submit a written definitive timeline for such action as directed to do so in the July 11, 2016 Notice of Warning and Notice of Deficiency.
10. As of August 29, 2016, the AWS office has not received the requested written plan detailing a corrective action plan or definitive timeline of permanent AWA compliance from the kennel.

## CONCLUSIONS

As a result of this investigation, AWS finds that the kennel, either by act or omission, violated 02 N.C.A.C. 52J .0102(1) and .0102(3) for 1 dog. AWS also finds that the kennel, either by act or omission, violated and N.C.A.C. 52J .0202(a) for 15 dogs. Furthermore, AWS finds that the kennel has been previously issued civil penalties for 2 violations of 02 N.C.A.C. 52J .0102(1) on June 2, 2016 and 1 violation of 02 N.C.A.C. 52J .0102(3) on October 15, 2016. AWS hereby notifies the owner of the kennel that any future violation of these NCAC regulations will be considered willful disregard of the AWA and pursuant to N. C. General Statute §19A-30, may result in the suspension or revocation of the boarding kennel license for this facility.

(See Appendix for text of cited General Statutes and Administrative Codes)

## CIVIL PENALTIES


As required by N.C. General Statute § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, All Wags Doggie Daycare and Boarding is assessed a civil penalty of:

- a) \$500.00 for 1 violation of N.C.A.C. 52J .0102(1) [second violation]
- b) \$500.00 for 1 violation of N.C.A.C. 52J .0102(3) [second violation]
- a) \$3,000.00 for 15 violations of N.C.A.C. 52J .0202(a) [\$200.00 per violation]

**\$4,000.00 TOTAL AMOUNT ASSESSED**

August 29, 2016  
Date

  
\_\_\_\_\_  
Dr. Patricia Norris  
Director, Animal Welfare Section  
North Carolina Department of  
Agriculture & Consumer Services

## Appendix

### Relevant Statutes and Regulations

#### **§ 19A-30. Refusal, suspension or revocation of certificate or license.**

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

#### **§19A-40. Civil Penalties.**

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the

violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s.6; 1998-215,s.3.)

## 02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

*History Note: Authority G.S. 19A-24;  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005.*

**02 NCAC 52J .0204                      PRIMARY ENCLOSURES**

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

*History Note:* Authority G.S. 19A-24;  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005; April 1, 1985.

## 02 NCAC 52J .0202 INDOOR FACILITIES

(a) Indoor housing facilities for dogs and cats shall be adequately heated and cooled when necessary to protect the dogs and cats from cold and excessive heat and provide for their health and comfort. The ambient temperature shall not be allowed to fall below 50 degrees F. or exceed 85 degrees F.

*History Note: Authority G.S. 19A-24;  
Eff. April 1, 1984;  
Amended Eff. January 1, 2005.*